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Application No. 10/809,120
Amendment Dated: 12 June 2008
Reply to Office Action of 14 March 2008

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REMARKS

Claims 1-2 and 4-9 are rejected as unpatentable on the ground of nonstatutory obviousness-type double patenting over designated claims of U.S. Patents 5,797,398 and 5,692,514. A terminal disclaimer applicable to claims 1-2 and 4-9 in the instant application is enclosed to overcome the double patenting rejection.

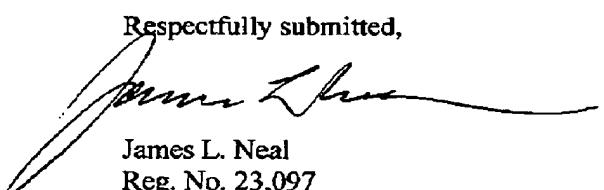
Claim 3 is rewritten in independent form and is now allowable as indicated in the office action.

Claims 1-2 and 7-8 are rejected under 35 USC 102(b) as anticipated by Alt 5,009,234. Alt teaches the use of a catheter in which two sensors (8 and 17) are both situated so as to be directly affected by thermal changes introduced at discharge ports (6) located at the distal end of the catheter. The differences in the temperature curves are then evaluated. (See Alt, column 6, line 52, to column 7, line 32, and Figs. 4 and 5.) Alt does not teach comparison or computation involving a value not affected by the thermal energy source as the applicant claims. It is respectfully submitted that claims 1-2 and 7-8 are not anticipated by Alt 5,009,234.

Claim 6 is rejected under 35 USC 103(a) as unpatentable over Alt 5,009,234 in view of Khalil 4,217,910. This combination of references fails to teach the claimed invention for the reasons given above in connection with claims 1-2 and 7-8. In addition, Alt teaches away from both the applicant's claimed invention and the proposed combination of references. In Alt both sensors are first affected by coolant as it flows through the tube (2). Then both sensors are again affected by the changed temperature of the blood stream produced by coolant discharged at ports (6). A substitution of the electric heaters of Khalil for the cryogen discharge ports of Alt would render Alt inoperable as described. (See Alt, column 7, lines 2-12.) It is respectfully submitted that claim 6 is not obvious over Alt in view of Khalil and further that the proposed combination of Alt and Khalil is improper as it is counter to the teaching of Alt.

It is submitted that claims 1-9 define patentable subject matter. Allowance is respectfully requested.

Respectfully submitted,


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